IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Civil Revision No. 175 of 2001

Judgment reserved on:9.11.2006

Date of decision:16th November,2006

Shakuntla Devi and others **Petitioners**

VERSUS

Pawan Kumar **Respondent.**

Coram

The Hon'ble Mr. Justice Deepak Gupta, Judge.

Whether approved for reporting?[1]

For the Petitioner: **Mr.Chirag Bhanu Singh,Advocate.**

For the Respondents : **Mr. Harish Bahl, Advocate**

Deepak Gupta, J.

This revision petition is directed against the order of the learned Senior Sub Judge, Mandi in Civil Suit No. 223 of 1992, dated 28.5.1981 whereby he has rejected the objections filed by the defendants (petitioners herein) to the report of the Local Commissioner. Though Mr.Harish Bahal, Advocate, had raised a contention with regard to the very maintainability of the revision petition and had contended that the revision petition is not maintainable on the ground that the order in question does not decide the suit, I have not gone into the question at this stage since in my view even

---

[1] ***Whether the reporters of the local papers may be allowed to see the Judgment?***

otherwise the order is correct and calls for no interference.

The plaintiff (respondent herein) filed a suit for possession and injunction against the defendants on the ground that they had encroached upon the suit land. The suit was decreed. Thereafter the petitioners filed an appeal before the learned District Judge, who remanded the matter to the learned trial court for getting the demarcation done by appointing a Local Commissioner. In the judgment of the learned District Judge it had been observed that the Local Commissioner shall carry out the demarcation in the light of the entries appearing in the Latha as well as the Musavi. The learned trial court appointed a Local Commissioner who carried out the demarcation and gave his report. The main objection to this report is that the report has been given on the basis of the Musavi and the Latha has not been taken into consideration. The learned trial court has rejected the objections. Hence this revision petition.

I have heard learned counsel for the parties and have also gone through the record. In my view the decision of the learned trial court rejecting the objections to the report of the Local Commissioner cannot be said to

be a case decided within the meaning of Section 115 of the Civil Procedure Code. By rejecting the objections, all that has been done is that the report of the Commissioner has been ordered to be read in evidence. At best, it is a piece of evidence. What is the value to be attached to this evidence is to be decided at the time of final hearing of the suit. This cannot be held to be a case decided and, therefore, the revision against such an order, in my opinion, would not lie. While taking this view, I am supported by a judgment of Calcutta High Court reported in **Sri Balai Chandra Kundu and another Vs. Radharani De and others, AIR 1986 Calcutta 396** wherein the court held as follows:

> "When the trial Court had the jurisdiction to decide the matter, even if it is decided wrongly, no interference under Section 115 is called for. Where in the title suit by the plaintiff the trial Court appointed the Advocate Commissioner to ascertain whether a portion of the plaintiff's plot in suit was wrongly included in the defendant's plot in the record of rights and on submission of his report by the Commissioner, the trial Court considered the report and the objections raised by the defendant and in exercise of its discretion accepted the report after rejecting the defendant's objections, there cannot be said to be any material irregularity in the exercise of jurisdiction by the trial court so as to

> justify interference by the High Court in revision under Section 115. Only because evidence of local witnesses was not taken by the Commissioner would not justify the conclusion that the report was incorrect. Even if the High Court in revision takes the view that the trial court because of the discrepancy in the report, which it treated to be minor, should not have accepted the Commissioner's report, it would not be a fit case calling for interference under Section 115."

In **Hari Ram Vs. Ratti 1974 ILR 919** wherein the trial court admitted the documents in evidence, this court held that a revision would not be maintainable against such an order admitting the documents in evidence.

The apex court in **the Managing Director (MIG) Hindustan Aeronautics Ltd. Balanagar, Hyderabad and another Vs. Ajit Prasad Tarway, Manager (Purchase and Stores) Hindustand Aeronautics Ltd. Balanagar, Hyderabad, AIR 1973 SC 76** laid down that the High Court should not interfere in an order even if the order is right or wrong unless the court below had exercised its jurisdiction illegally or with material irregularity. In the present case the learned trial court had the jurisdiction to decide the objections to the

report and whether the same have been decided rightly or wrongly cannot be gone into by this court in revisional jurisdiction.

Even otherwise on merits, I find that the petitioner could not have objected to the report. Alongwith the report of the Commissioner, the joint statement of the parties has been recorded in which it is stated that all the parties are totally satisfied with the demarcation. This statement is signed by all the three petitioners. Once a party makes such a statement before the Commissioner, it cannot be permitted to file objections to the report of the Commissioner.

In view of the above discussion, the petition is without any merit and the same is dismissed. The suit was filed as far back as in the year 1991. The parties through their counsel are directed to appear before the learned trial court on 11th December, 2006. The learned trial court is directed to dispose of the suit as expeditiously as possible and in any event not later than 31st May, 2007.

November 16 , 2006(K) (Deepak Gupta), Judge.